

**Charles S. Zanetis d/b/a Quality Hotel and Marvinne Nesbeth.** Case 9-CA-30145

April 26, 1994

**DECISION AND ORDER**

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On September 30, 1993, Administrative Law Judge Russell M. King Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.<sup>2</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Charles S. Zanetis d/b/a Quality Hotel, Louisville, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In addition, the Respondent contends that some of the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the contentions are without merit.

<sup>2</sup> We shall substitute a new notice to correct certain inadvertent errors in the judge's recommended notice.

**APPENDIX**

**NOTICE TO EMPLOYEES**

**POSTED BY ORDER OF THE**

**NATIONAL LABOR RELATIONS BOARD**

**An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge our employees because they engage in the protected concerted activity of a strike over their working conditions.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Wanda Alexander, Dale Brown, Sharon Davis, Barbara Hall, Latasha Hall, Pearl McDole, Shannon McDole, Janet Mitchell, Marvinne Nesbeth, and Tujuan Perry immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make the employees named above whole for any loss of earnings and benefits they suffered by reason of our discrimination against them with interest.

WE WILL rescind our discharge of the above-named employees and WE WILL notify them in writing that we will not use their discharges against them in any way.

CHARLES S. ZANETIS D/B/A QUALITY HOTEL

*Earl Ledford, Esq.* and *Mary Elizabeth Walker-McBride, Esq.*, for the General Counsel.

*J. Fox DeMoisey, Esq.* and *Robert L. Keisler, Esq.*, of Louisville, Kentucky, for the Respondent Employer.

**DECISION**

**STATEMENT OF THE CASE**

RUSSELL M. KING JR., Administrative Law Judge. This case was tried in Louisville, Kentucky on June 24-25, 1993.<sup>1</sup> The original charge was filed by the individual, Marvinne Nesbeth, on November 12. An amended charge was filed by Nesbeth on December 31, and the complaint was also issued on December 31.

At about 9 a.m. on September 5, 10 of the Respondent hotel's housekeeping employees timely reported to work, but did not start working, with the sympathy of their supervisor executive housekeeper, Charlene Patterson, all demanding first to speak to owner Charles Zanetis about what they considered to be poor working conditions. Zanetis, who was some miles away from the hotel at the time, was summoned and arrived at about 11 a.m., and promptly ushered the non-working housekeepers (including Charging Party Nesbeth and Supervisor Patterson) out of the hotel and away from the premises. A fact in controversy in the case is whether or not Zanetis' wife had earlier in the morning told the housekeepers that they were fired.

The complaint alleges that the 10 employees "ceased work concertedly and engaged in a strike," and that the response of Zanetis was the unlawful discharge of the 10 em-

<sup>1</sup> All dates hereafter are in 1992 unless otherwise indicated.

employees in violation of Section 8(a)(1) of the Act.<sup>2</sup> The Respondent, while admitting knowledge of the housekeepers' complaints, denies that their work stoppage was concerted and a strike, alleging that the employees "voluntarily quit their employment."

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel<sup>3</sup> and counsel for the the Respondent, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all times material herein, the Respondent, a sole proprietorship, has been owned by Charles S. Zanetis and his wife Shayne L. Zanetis, doing business as Quality Hotel, and has been engaged in the operation of a hotel providing food and lodging in Louisville, Kentucky.<sup>4</sup> During the 12-month period prior to issuance of the complaint, the Respondent, in the conduct of its operations, derived gross revenues in excess of \$500,000. During the same period, the Respondent purchased and received at its Louisville, Kentucky facility goods valued in excess of \$10,000 directly from points outside the State of Kentucky. As alleged and admitted, I find that at all times material herein, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

###### A. Testimony and Evidence for the General Counsel

Executive housekeeper Charlene Patterson had worked at the hotel for a year and nine months. She described herself as the "director" of housekeeping and as such she issued purchase orders, hired, fired and disciplined housekeeping employees, and ran the laundry.<sup>5</sup> Patterson testified that there were approximately 17 employees in housekeeping, which was broken down into three areas, the room attendants, the laundry area, and the "houseman."<sup>6</sup> Patterson indicated that

<sup>2</sup>The National Labor Relations Act, 29 U.S.C. § 151 et seq.

<sup>3</sup>The term "General Counsel," when used herein, will normally refer to the two attorneys in the case acting on behalf of the General Counsel of the National Labor Relations Board (the Board), through the Regional Director.

<sup>4</sup>The Respondent's answer admits these jurisdictional allegations in the complaint. Charles Zanetis and his wife Shayne Zanetis both testified that they jointly owned the hotel. However, the complaint alleges and lists only Charles S. Zanetis as the owner and "Proprietor," and lists Shayne L. Zanetis as "Supervisor," and the Respondent's answer also admits these allegations. Although no motion was made at the hearing to amend the complaint regarding joint ownership, I shall take this into consideration in the recommended Order at the end of this decision.

<sup>5</sup>Helen Mercer, whose testimony is summarized later under the Respondent hotel's evidence, indicated that she was the laundry supervisor, and had been so for three years. This apparent conflict in the testimony was never resolved in the record. Mercer had worked at the hotel a total of 6 years. On September 5 she came to work at 10 a.m. and was asked to join the other housekeepers in not working, but refused. She remained employed at the hotel.

<sup>6</sup>A "houseman" had been a male employee who worked mainly with the room attendants (housekeepers), doing heavy or bulk lifting

Charles Zanetis was not at the hotel "a lot of times" and thus she usually reported to Peggy Brewer, who she described as the assistant to Zanetis.<sup>7</sup> On September 5 (the Saturday before Labor Day) Patterson arrived at the hotel at 8:45 a.m. and found the housekeepers loading their carts but complaining. They had discovered that their time cards reflected they were being charged for breaks and lunch, which had to be purchased outside and away from the hotel, and which was not the case with other hotel employees. Other complaints included the failure to pass out a posted \$20 reward, the shortage of vacuum cleaners, no linen in the laundry, locked fire exits on the upper floors, the lack of enough uniforms,<sup>8</sup> and the lay off of the houseman earlier that week. One housekeeper had been stuck with a hypodermic needle that had been left in a waste basket, but the "front desk" told her if she wanted medical treatment, she would have to pay for it herself. Patterson testified that there had always been complaints, and earlier in the week (and throughout the week) she had gone to Peggy Brewer about the houseman's lay off and other complaints, requesting a meeting with Zanetis because the situation was getting "out of hand" and she wanted to "stop it before it got too far gone," but Brewer always gave her an excuse as to why Zanetis could not see her.

Patterson indicated that on Saturdays she would have only eight or nine housekeepers to clean rooms because she always had to send two to Timothy's restaurant (away from the hotel and also owned jointly by the Zanetis') to clean there.<sup>9</sup> On September 5, after again hearing all of the complaints, Patterson told the housekeepers she would immediately go to guest service manager, Steve Dress (at the front desk) with their complaints, which she did, explaining to Dress that the housekeepers were upset and were not going to start in the rooms until they had spoken to C. Zanetis. Patterson maintained that she did not tell Drees that anyone had quit, because "nobody had indicating [sic] quitting." Patterson testified that after she talked to Drees she returned to her office whereupon she received a phone call from Shayne Zanetis who told her that her husband was away getting a haircut, but for her Patterson to lay the phone down and tell the housekeepers that if they didn't "get their mother fucking asses up and go to work, or [she would] fire them all." Patterson did this and the housekeepers responded that they still wanted to talk to C. Zanetis. Patterson went back to the phone and told C. Zanetis their response, and S.

or moving as needed, including shampooing carpet, cleaning windows, turning over mattresses, and emptying garbage dumpsters.

<sup>7</sup>The complaint lists Peggy A. Brewer as "Administrative Assistant," which she was to Charles Zanetis. From the testimony in the case, Brewer was in reality more like the assistant manager, under Zanetis, who was away from the hotel much of the time, as was his wife Shayne, who managed a restaurant in another part of the city which they also jointly owned.

<sup>8</sup>Patterson testified that some of the housekeepers without uniforms had complained about overtures made to them by Shriners who had recently stayed at the hotel.

<sup>9</sup>Shayne Zanetis actually ran the restaurant, and spent little time at the hotel. On the morning of September 5, Patterson did not send two housekeepers to Timothy's as "no one really wanted to go." This detail to Timothy's on Saturdays was one of the complaints of the housekeepers. According to Patterson, it put a strain on the workload at the hotel, and the housekeepers did not like working at the restaurant.

Zanetis then told Patterson that they were all fired and could go home.<sup>10</sup> Patterson then told this to the housekeepers, whereupon three of them (Nesbeth, Hall, and Davis) left to go to the nearby Chevron station.<sup>11</sup> Peggy Brewer then called Patterson and ask what was going on, and Patterson told Brewer that S. Zanetis had fired all the housekeepers, but that they still wanted to talk to C. Zanetis about their complaints. According to Patterson, Brewer then asked if the housekeepers would start the rooms if she got them a houseman, to which she replied that the housekeepers still wanted to talk to C. Zanetis.

Patterson then learned from Drees (by phone) that C. Zanetis had arrived and was on his way down. Patterson summoned the housekeepers together, and between 10:30 and 11 a.m. C. Zanetis arrived with a "big guy with him like a body guard that was standing there with his hand in his pocket." Patterson testified that she was "scared" and that Zanetis first stated that he had heard they all wanted to see him, and then asked what about, and Patterson produced a list of complaints from which she started to read, whereupon Zanetis said to them all "let's go," instructing them to first turn in their keys and uniforms. Patterson indicated that she and the other housekeepers did so, and Zanetis then told the "big guy" to escort them all (including her) to the door, and they all thus left the hotel. Patterson testified that she still does not know why she lost her job, but assumed it was a "racial thing" because C. Zanetis would see and confer with the "other managers," but not her, and she thus filed an "EEOC" claim over the loss of her job.

Former laundry worker Pearl McDole started to work at the hotel July 12, 1990. She first cleaned rooms and then worked in the laundry until September 5. Her daughter Shannon was also a housekeeper at the hotel. She arrived at the hotel at 8:30 a.m. on September 5 and testified that as the housekeepers began arriving, they were complaining about different things, including there not being enough sheets, towels, wash cloths, and pillow cases. McDole related that she also complained to Patterson about working conditions in the laundry, and that they all wanted to tell C. Zanetis their complaints. McDole indicated that she had earlier complained to Patterson about a cut in her working hours, and Patterson told her that she had been trying to see C. Zanetis about the complaints of all her employees, but had been unsuccessful. McDole was in Patterson's office when she talked with Shayne Zanetis, and she corroborated Patterson's testimony in this regard, indicating that Zanetis had used a "bad word." McDole testified that when Zanetis arrived he asked Patterson what was going on, and Patterson said that she had a "bunch" of complaints to give him. As Patterson stood up and started to read the complaints, Zanetis told Patterson to stop, stating that he didn't want to hear the complaints, whereupon he said to them "come on, let's go." McDole indicated that they all thought Zanetis meant for everyone to go to a nearby round table, but when they got into the hall,

Zanetis told them all to "get out." According to McDole, Zanetis then told her and her daughter to leave their keys and uniforms, followed them back to the laundry to get their personal items, and they then were escorted to the door by "a great big guy" which she had never seen before. In mid-December, both McDole and her daughter were offered their jobs back at the hotel but declined, McDole indicating that the "problem" was still there, as was the "person" causing the problem.<sup>12</sup>

Former housekeeper Tujuania Perry had worked at the hotel for 3 years prior to September 5. Perry testified that she arrived at the hotel at about 8:30 a.m. on September 5 and went to the sixth floor, got her cart and came back down to the basement and clocked in.<sup>13</sup> Perry related that she clocked in after she got her cart because of a shortage of linen. Perry could not find her timecard at first, and in searching for it she noticed that employees in the kitchen department were not being docked for breaks while the housekeeping employees were, although they were working straight through for 8 hours. Perry then went to Patterson and complained, and found other housekeeping employees there with the same and other complaints. Perry related that Patterson was making a list of these complaints, and had been trying to see C. Zanetis about them. It was Perry who had been stuck in the hand by a needle and Perry also described an incident where, when she was "more or less . . . locked on [her] floor" wearing "half" a uniform, she was "chased by a guest . . . like sexual advances towards [her]." Perry complained to Patterson about this incident and other matters, including having to work at Timothy's. According to Perry, all the housekeeping employees were complaining the morning of September 5 and wanted to talk to C. Zanetis before they reported to their floors to start working. Perry essentially corroborated Patterson's testimony about her phone conversation with S. Zanetis (including the foul language and the firing), about the arrival of C. Zanetis, and about what happened thereafter. Perry also indicated she was "scared" when Zanetis arrived with the man "about six feet tall" who she had never seen before. Perry testified that they all had remained after S. Zanetis told them they were fired because they wanted to keep their jobs and they felt that because C. Zanetis was their "general manager," he was the only one that could fire them. Additionally, Perry was asked by the General Counsel if she had ever talked to Patterson "concerning some sort of stoppage of work," and Perry answered, "Yes . . . About a week or so before [September 5]." Perry was then asked about the "nature" of that conversation, to which she responded by stating she spoke about her complaints, adding "it was [her] life that was on that sixth floor." During cross-examination Perry denied the use or knowledge of the term "work stoppage," indicating that she only wanted to convey to Patterson her need to see C. Zanetis personally. Perry testified that on Friday (September 4) she also asked Patterson to try and talk to C. Zanetis "this week" because "we was falling short because he [Zanetis]

<sup>10</sup> In cross-examination, Patterson conceded that sometime during this phone conversation, S. Zanetis indicated that her husband could meet with the housekeepers after the weekend was over, the following week.

<sup>11</sup> This Chevron station was across the street, where the housekeepers frequently went to get snacks. The three housekeepers later returned to the hotel later that morning, and according to Patterson were present when C. Zanetis finally appeared.

<sup>12</sup> The offer of reinstatement came in the form of a letter dated December 17, signed by Peggy Brewer. The initial charge in the case had been filed on November 12.

<sup>13</sup> Patterson's office was in the basement, as was the laundry.

was laying people off.”<sup>14</sup> Perry also received an offer of reinstatement from the hotel in December, but apparently did not respond.

Charging Party and former housekeeper Marvine Nesbeth had worked for the hotel 2-1/2 years as of September 5. She also told Patterson on the morning of September 5 that she wanted to see C. Zanetis to, among other things, request a raise because she had been making \$4.25 an hour since she started working at the hotel. Nesbeth testified that after S. Zanetis told them they were fired, she, Barbara Hall, and Sharon Davis left the hotel to go to the Chevron station to get a pop or coffee and returned 5 minutes later, and soon thereafter, at almost 11 C. Zanetis arrived with a “tall” man who she had never seen before, and who she described as a “bodyguard.” Nesbeth also essentially corroborated Patterson’s (and other) testimony as to what transpired after C. Zanetis’ arrival. Nesbeth testified that she got the idea to contact the Board from “a man” at the post office who gave her “a number” to call.

#### *B. Testimony and Evidence for the Respondent Hotel*

The hotel’s general manager, Charles Zanetis, confirmed that he and his wife Shayne both own the Quality Hotel and Timothy’s restaurant. Zanetis testified that at the hotel there was no “innkeeper of sorts,” but that department heads run the hotel, and that Peggy Brewer “oversees” the hotel “almost as an assistant manager.” The departments are housekeeping, dining room, kitchen, lounge, and front desk.<sup>15</sup> Zanetis related that he had an “open door” policy, and if anyone wanted to see him, all they had to do was to contact Peggy Brewer. Zanetis added that about a month prior to September 5 he had met with Patterson and given her a raise, at which time he asked her if she had any problems in housekeeping, to which she replied a “few small” ones which she felt she could handle. Zanetis indicated that on September 5 he was in the “barber’s chair” when his wife called and told him that the housekeepers were quitting because of “job conditions,” but also told him that she thought she could take care of it with the management that was at the hotel. After his wife, Steve Drees also called him at the barber shop, after which he left for the hotel. Zanetis related that while on the way, his wife called on his car phone, stating that the housekeepers were upset about the houseman, to which he replied that they should concede that and arrange to have a houseman come in. In later testimony, Zanetis changed and indicated that it was either Drees or Brewer who called at the barber shop (after his wife), and the concession of a houseman was then discussed. Zanetis initially testified that on the car phone he and his wife also discussed a meeting with the housekeepers Sunday, Monday, or Tuesday, which was “not acceptable,” but in later testimony Zanetis said nothing about a meeting during this car phone conversation, but related that his wife told him a houseman was not going to help and that the housekeepers were “walking out.” Thus Zanetis indicated that he did not go to hotel that morning (September 5) to have a meeting with the housekeepers. Zanetis related that also while in route to the

hotel he made several phone calls to cleaning companies and other people in the business to see if he could hire or borrow people to go in and clean the rooms. Zanetis testified that he arrived at the hotel between 10:30 and 11 and observed “some” of the housekeepers in the parking lot leaving, and that he went in and first talked to Drees at the front desk, asking him if they had quit and left the property, to which Drees replied “about half.” Zanetis testified that he then had “one of the people that had come in to help us clean rooms” (one Jim Bersaglia) to go to the housekeeping department with him “to see if the carts were being loaded or where they were at, so that the people we had called to clean the rooms could get the carts and get into housekeeping supplies.”<sup>16</sup> Zanetis related that when he arrived at the housekeeping office Patterson and six to nine employees were there, some with their coats on, and he saw carts that were not ready to go up to the floors. Zanetis testified that he then told Patterson that he understood there was a problem, to which she replied, “We are quitting because of job conditions,” Zanetis adding that he did not see a list and did not know whether or not Patterson had a list. Zanetis said he replied “let’s go,” and as the housekeepers walked by him he asked them to leave their keys and uniforms. Zanetis could not remember whether he or “other staff” accompanied any employee while getting their personal belongings, but related that he told Bersaglia to make sure there were no problems and that the housekeepers left without any further disruption to the business. Zanetis testified that the weekend of September 5 was a holiday weekend and the hotel was full with demanding guests, and the lobby was full of people checking out or in.

Shayne Zanetis<sup>17</sup> also confirmed that she and her husband owned both the hotel and Timothy’s restaurant, and that she basically operated Timothy’s. Zanetis testified that at about 9 a.m. on Saturday September 5 her husband’s “secretary” Peggy Brewer called her at home stating that there was a problem at the hotel, and that the “maids” were leaving. Zanetis testified she then called the hotel and talked to Patterson, who said they (the housekeepers) were not going to work, mainly because her husband had let the houseman go. Zanetis related she then asked Patterson what the houseman did, and then told Patterson she did not think even “the Ritz Carlton in New York and Chicago . . . had maids for their maids.” According to Zanetis, Patterson then complained that “C. Zanetis couldn’t talk to me . . . [and] didn’t go on the floors and talk to the maids enough,” to which she replied that there was an “open door” policy and that other hotel owners didn’t go on the floors and talk to maids, but they could have a meeting Monday. Zanetis indicated that Patterson then said the Monday was a holiday, and she then suggested Tuesday. Zanetis related that Patterson then put the phone down, and after there was “mumbling voices in the background,” Patterson came back on and said, “No, we are

<sup>14</sup> Perry was referring here to the lay off of the houseman, which she testified made the housekeeper’s work much harder.

<sup>15</sup> C. Zanetis was asked the last name of the present head of the housekeeping department, and he could not remember.

<sup>16</sup> According to Zanetis, Bersaglia had not been an employee of the hotel. Bersaglia was not called as a witness to corroborate Zanetis’ version of what transpired in the basement regarding the housekeepers. Zanetis later testified that Bersaglia had been called in by his “wife and other staff to assist in cleaning rooms.”

<sup>17</sup> The transcript reflects the spelling of S. Zanetis’ first name to be “Shane,” but the complaint, the Respondent hotel’s brief, and my hearing notes reflect the spelling to be “Shayne.” The transcript is riddled with such small errors.

quitting," and she then asked Patterson if she too was quitting, and Patterson responded, "Yes." Zanetis indicated she then hung up the phone and "immediately" called her husband, and began to call around to get people to help clean the rooms. Zanetis testified that later on that day she went to "my" restaurant. In cross-examination, Zanetis conceded that at some point during the conversation with Patterson but before Patterson said they were quitting, she did tell Patterson that if they went upstairs and started cleaning, they could have their jobs. Also during cross-examination, Zanetis was shown her investigative affidavit given to the Board, reflecting that Patterson did state that her husband refused to have a meeting with the housekeepers. Zanetis was then asked if in fact Patterson had made the statement, and Zanetis replied that she could not remember. She specifically denied telling Patterson that the housekeepers were fired, and that she used foul language. She also denied that Patterson ask for a meeting that day with her husband.

Guest Service Manager Steven Drees came to work at the hotel in January 1989, and worked at the front desk. Drees testified that when he needed to see C. Zanetis regarding problems or other matters, he would go to C. Zanetis' "secretary" Peggy Brewer for an appointment. Drees related that at about 9:15 a.m. on September 5 Patterson called him and told him that the "maids" were "refusing to go to work" and that some had already quit, mainly because they did not have a houseman, and they wanted a meeting with C. Zanetis. Drees indicated he then called Brewer at home and told Brewer to contact C. Zanetis and have him call Patterson to get the maids working. According to Drees, Patterson then again called him and asked if he had reached C. Zanetis yet, adding that if he called, to put him through to her. Subsequently, Patterson again called and asked if Zanetis was on his way, to which Drees replied that he had not heard from Zanetis, but that Brewer had called him and told him that Zanetis was on his way. Drees testified that he saw "three or four" maids go out the front door,<sup>18</sup> and then S. Zanetis called and ask what was going on, and he responded by telling her what Patterson had told him, whereupon S. Zanetis asked to be connected to Patterson. Drees testified that while S. Zanetis and Patterson were talking, C. Zanetis called in from his car phone as asked to be put through to Patterson, and Drees informed him that his wife and Patterson were on the line, after which C. Zanetis indicated he was on the way and would be there within the hour. According to Drees, Zanetis asked what was going on and he replied that Patterson had informed him that some had already quit, adding that he had seen three or four leave, and Zanetis then asked him to call other hotels to see if they could get "some help in there to help Charlene [Patterson] get the rooms clean, because the other ones were refusing to work." In cross-examination Drees added that he also told Zanetis that Patterson and the maids were still waiting to have a meeting with him.<sup>19</sup> Drees testified that Patterson then (and again) called

him, stating that she also was going to quit because she did not have any help, and he told Patterson that she didn't have to quit because they were "sending over some maids to help her," and that if he had to he would get more front desk help and come down and help her himself. Drees indicated that when Zanetis arrived, "some other person . . . a large guy" (who he didn't know) was with him who asked where everybody was, and he Drees replied that they were still downstairs, and Zanetis and the other person left and got on the elevator. Then Drees, himself, got on an elevator and went to the basement, relating that he overheard Zanetis asking for keys, and saw some maids getting on the elevator as he got off.

Peggy Brewer described herself as administrative assistant to Charles Zanetis, taking care of all the books, and handling "a lot of situations that come up at the hotel." Brewer was not working on September 5 and testified Drees called her about 9 a.m. stating that the "maids" would not go to work. Brewer then talked to Patterson and ask her what the problem was, and Patterson responded that she had a list and wanted a meeting with Zanetis "before they would go to work." Brewer indicated she then suggested setting up a meeting the first of the week because Zanetis lived "quite far" from the hotel, and Patterson said "no." Brewer testified that she then called Zanetis' home and talked to S. Zanetis, told her what the problem was, and S. Zanetis said she would call her husband at the barber shop. Brewer related that soon thereafter, S. Zanetis called back and asked her to start calling other hotels in an attempt to get maids to start cleaning rooms. Brewer testified that there was an open door policy at the hotel and the department heads could "knock on [Zanetis'] door or come to her and she would set up a meeting. Brewer was asked if within two weeks prior to September 5 Patterson had approached her about a meeting with Zanetis, and she responded "not to my knowledge, no." Brewer was also asked if Patterson ever took advantage of the open door policy, and she replied, "I really can't say." Brewer did concede that Brewer had a meeting with Zanetis "a few weeks" prior to September when Patterson ask for and received a raise, adding that she set up the meeting at Patterson's request.

Housekeeper Barbara Hall testified that when she arrived at the hotel the morning of September 5 Pearl McDole told her that Patterson didn't want them to "touch anything" until she got there. Hall indicated that Patterson and "all the other employee housekeepers" wanted and requested a meeting with C. Zanetis, who took a "few hours" to get there. Hall related that when Patterson arrived she told her not to touch anything until Zanetis got there, and that she, Marvane Nesbeth, and Sharon Davis then left the hotel and went to the Chevron station, after which they went to a mall to pay for and get Nesbeth's dress out of "lay away," and when they returned to the hotel everybody was leaving, and Zanetis was standing at the door. Patterson, who was also leaving, then told her that they were all fired so she went and cleaned out her locker and also left. Hall related sometime that morning, housekeeper Tujuani Perry asked her if Patterson had called her at home the previous evening, to

<sup>18</sup>During his cross-examination Drees changed these numbers to "five or six," and then to "six or seven," and finally back to "at least four to five, maybe more," none of which he could identify and none of which he saw come back.

<sup>19</sup>Drees' testimony was, at times, confusing and inconsistent. He started with one car phone call from Zanetis and ended with four in cross-examination, the last being from the hotel parking lot. How-

ever, it should be noted that the front desk was extremely busy at the time.

which she responded that she did not have a phone.<sup>20</sup> Hall testified that several days later she called Zanetis and asked him what had happened, and Zanetis told her that everybody had been fired, and she then asked Zanetis for her job back, which she got, and has worked for the hotel since then. In cross-examination Hall indicated that it was Brewer she talked to about getting her job back, and that she told Brewer that "she wasn't down there when C. Zanetis said we was all fired." Later in her cross-examination Hall again indicated it was Zanetis she talked to about getting her job back and, contrary to her earlier testimony Hall denied asking Zanetis what had happened.

Annie Price described herself as "the lobby maid," and has worked at the hotel for 20 years. Price testified that on September 5 she came to work at 6 a.m., got her cart from downstairs and cleaned first the lobby and then started cleaning the lounge, when she took the bar rags to the basement to be washed and saw Patterson and the housekeepers "sitting down" in Patterson's office. Price indicated that housekeeper Dale Brown came out and asked her if she was going to "participate with them . . . did [she] want better," to which she replied yes, but that what they were doing was wrong, and then she went back upstairs and "locked" herself in the lounge until all the housekeepers had left the hotel.

Helen Mercer had worked at the hotel for 6 years, the last 3 of which were in the laundry. Mercer described herself as "the supervisor" in the laundry, arriving at 10 a.m. She testified when she arrived on September 5 all the "maids" were in Patterson's office and when she got to the laundry, she found that no carts had been brought down and there was nothing to do, so she called Patterson and asked her what was going on and Patterson said "come up and join us," to which she replied no, adding that she was staying in her own department. Mercer testified that she called Steve Drees and told him what was happening, and Drees indicated he had another call and they hung up. According to Mercer, Pearl and Shannon McDole also worked in the laundry, but at the time they also were in Patterson's office.<sup>21</sup> Mercer indicated that about an hour later Zanetis came into the laundry and asked her to "gather up all the keys," and then left stating that he was going up to the front door. Mercer related that there was a table in the laundry where the "maids" ate their lunch, and that on the previous day at the lunch table she heard Patterson state to the others present that "we can get more food stamps than we can working here."

#### *C. Analysis and Initial Conclusions*

In this case I credit the four witnesses called by the General Counsel (Patterson, McDole, Perry, and Nesbeth). The Respondent called seven witnesses, C. and S. Zanetis, Drees, Brewer, Hall, Price, and Mercer. I discredit almost completely the testimony of C. and S. Zanetis, who showed little or no respect for or attention to most of the employees in

the housekeeping department (including Patterson). They did not know many of their names, and their status as employees at the hotel was as low as you could get. For the most part they were not considered as room attendants, laundry workers, or housekeepers by the hotel's management. They were considered as "maids," the term used exclusively by C. and S. Zanetis, Drees and Brewer. As maids, they were not deserving of the consideration or attention (much less the truth) which they were finally demanding. C. and S. Zanetis considered that the gall of this lowest of employee groups could not be tolerated, and had to be put down. This attitude showed through in their testimony and demeanor. Drees and Brewer were basically truthful, but when it came to key questions and answers, misguided loyalty to the hotel's owners overcame them, causing them to skirt and hedge. I discredit them both in certain instances. But Brewer I find did truthfully confirm that Patterson stated the housekeepers wanted a meeting with C. Zanetis "before they would go to work." Housekeeper Barbara Hall I find to be an unreliable witness, not mainly for a lack of veracity, but for her obvious inability to remember important aspects of events, which made her easy prey for the power of suggestion. I do credit "lobby maid" Price and laundry worker Mercer, whose testimony however does little to support the hotel's case.

Whether planned or spontaneous, the actions of Patterson and the housekeepers the morning of September 5 were concerted and came as a result certain complaints about the terms and conditions of their employment, most of which (if not all) were real and legitimate. Patterson had tried to meet with Zanetis, but without success. If the hotel had an "open door" policy, it was not applied to the housekeeping department, contrary to what Brewer indicated in her testimony. When Patterson called Drees at the front desk that Saturday morning, she told him that the housekeepers refused to go to work until they meet with C. Zanetis about their complaints, but she did not tell Drees that some or all had quit, as Drees claimed. At some point, three housekeepers did leave but they shortly returned. Three others also left and stayed away for a longer period, but also returned. When S. Zanetis called Patterson, I find that she did use foul language and told Patterson to tell the others that if they did not get to work, she would fire them. When they refused, S. Zanetis fired them, but they remained in the housekeeping department waiting for the arrival of C. Zanetis, thinking that he would hear their complaints and disregard his wife's firing. C. Zanetis had no such plans, and as he testified, he did not go to the hotel that morning for any meeting. I find that at some point that Saturday morning, C. Zanetis found out what his wife had done, and that his sole purpose upon his arrival at the hotel was to stand behind his wife and see that the housekeepers left the premises. Toward this end he took one certain Jim Bersaglia with him, claiming (falsely) that when he arrived at the housekeeping department, Patterson told him that they were quitting because of job conditions. C. Zanetis' version of what happened, if true, could of course been corroborated by testimony from Bersaglia, who was not called to testify.

In this case the General Counsel must make a prima facie showing sufficient to support the inference that conduct protected under the Act was a motivating factor in the Respondent hotel's actions in discharging the 10 housekeepers. The burden then shifts to the Respondent to demonstrate that the

<sup>20</sup> During the hearing and during his examination of Hall, counsel for the Respondent attempted to draw an inference that Patterson had called other housekeepers the night before to enlist support for withholding their services the following morning until they were able to meet with Zanetis.

<sup>21</sup> In cross-examination Mercer accused Pearl McDole of once trying to take her job away from her.

discharges would have taken place notwithstanding the protected conduct.<sup>22</sup> I find that the General Counsel did make a prima facie showing that the housekeepers were discharged because they ceased work concertedly and engaged in a strike over their working conditions, and that they did not voluntarily quit as alleged by the Respondent. I further find that the sole reason for the discharge of the housekeepers was their concerted and protected activity, and thus I find that the Respondent failed to demonstrate that the discharges would have taken place for other reasons.

#### CONCLUSIONS OF LAW

1. The Respondent hotel is an employer engaged in commerce within the meaning of Section 2(2) and (6) of the Act.
2. The Respondent, on September 5, 1992, violated Section 8(a)(1) of the Act when it discharged Wanda Alexander, Dale Brown, Sharon Davis, Barbara Hall, Latasha Hall, Pearl McDole, Shannon McDole, Janet Mitchell, Marvine Nesbeth, and Tujuan Perry.
3. The unfair labor practices found in paragraph 2, above, affected commerce within the meaning of Section 2(7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act, it shall be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent will be required to offer immediate and full reinstatement to the 10 discharged employees, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.<sup>23</sup> In addition, the Respondent shall be required to post an appropriate notice, and to remove from its files and records any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way. Loss of earnings and other benefits due hereunder shall be computed on a quarterly basis from the date of the discharges to the date of a proper offer of reinstatement, less any interim net earnings, as proscribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>24</sup>

<sup>22</sup> *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

<sup>23</sup> Hall testified that she got her job back, and the evidence reflects that both Pearl and Shannon McDole, and Perry were offered reinstatement in mid-December. However, they will all be included in the remedy, as the reinstatement offers were deficient. If it is found that Hall actually did go back to work, adjustments for this can be made during the compliance stage of the case.

<sup>24</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and rec-

#### ORDER

The Respondent, Charles S. Zanetis and Shayne L. Zanetis, d/b/a Quality Hotel, Louisville, Kentucky, its officers, agents, successors (in name or otherwise<sup>25</sup>), and assigns, shall

1. Cease and desist from

(a) Discharging employees because they engage in concerted activities which are protected under Section 7 of the Act.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the right guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Wanda Alexander, Dale Brown, Sharon Davis, Barbara Hall, Latasha Hall, Pearl McDole, Shannon McDole, Janet Mitchell, Marvine Nesbeth, and Tujuan Perry immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision. In addition, remove from its files and records any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Louisville, Kentucky hotel copies of the attached notice marked "Appendix."<sup>26</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

ommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>25</sup> There is evidence in the record that the hotel's name has been changed, but there was no motion to amend in this regard.

<sup>26</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."